

Serial No.: 10/792,142  
Response to OA of 11/16/04

## Remarks

In the present response, original claims 1-7 are presented for examination.

### **Claim Rejection: Double Patenting**

Claims 1-7 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 of Forman USPN 6,802,586.

Applicant submits a terminal disclaimer in compliance with 37 CFR 1.321. Applicant respectfully requests withdraw of the rejection.

In filing the Terminal Disclaimer, Applicant relies upon the rulings of the Federal Circuit that the filing of such a Terminal Disclaimer does not act as an admission, acquiescence, or estoppel on the merits of the obviousness issue. "In legal principal, the filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither presumption nor estoppel on the merits of the rejection." Quad Environmental Tech v. Union Sanitary, 946 F.2d 870, 874 (Fed. Cir. 1991); and Ortho Pharmaceutical Corp. v. Smith, 959 F.2d 936, 941-942 (Fed. Cir. 1992).

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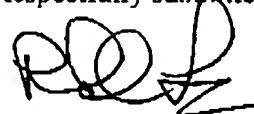
### CONCLUSION

In view of the above, Applicant believes all pending claims are in condition for allowance. Allowance of these claims is respectfully requested.

Any inquiry regarding this Amendment and Response should be directed to Philip S. Lyren at Telephone No. (281) 514-8236, Facsimile No. (281) 514-8332. In addition, all correspondence should continue to be directed to the following address:

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Respectfully submitted,



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CERTIFICATE UNDER 37 C.F.R. 1.8: The undersigned hereby certifies that this paper or papers, as described herein, are being transmitted to the United States Patent and Trademark Office facsimile number 703-872-9306 on this 15th day of December, 2004.

By \_\_\_\_\_  
Name: Be Henry